Filed 8/5/03 Benjamin-Sohal v. County of Alameda CA1/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

JASMINE BENJAMIN-SOHAL, Plaintiff and Appellant, v. COUNTY OF ALAMEDA, Defendant and Respondent.	A100914 (Alameda County Super. Ct. No. 2002065301)

I. INTRODUCTION

This is an in pro per appeal from the denial of a petition for a writ of mandate, also prosecuted in pro per. We affirm.

II. FACTUAL AND PROCEDURAL BACKGROUND

The following recitation of the facts is taken principally from the allegations of appellant's petition for a writ of mandate, her declaration accompanying it and the attachments to that declaration.

In 1994, appellant was apparently involved in several family court proceedings regarding paternity and child custody and support issues. Six years later, in approximately July 2000, she was apparently involved a workers' compensation claim involving her then-employer. In the course of this claim, again apparently, an issue arose as to whether appellant had been reported to the Alameda County Child Protective Services Department (CPS) for "child abuse." Claiming that any such report was false, and more specifically that she was the "reporting" and not the "reported" party regarding any such issue, appellant served a Workers' Compensation Appeals Board subpoena

duces tecum in July 2000 upon the custodian of records for CPS for "any/all reports involving [her] as responsible for child abuse." Apparently she received no response to this subpoena nor to several "follow-up" letters sent starting in August 2000.

Appellant filed her original petition for a writ of mandate on August 29, 2002.[1] On September 18, this petition was denied without prejudice because of appellant's failure to comply with service and notice requirements. On the same day, appellant refiled her petition and, a few days later, a supporting declaration and memorandum of points and authorities. The Alameda County Counsel's office filed a brief in opposition to the petition on October 22, and appellant then filed her amended petition for writ of mandate on October 28. The matter was heard by the superior court on November 14. Appellant appeared personally to argue the matter to the court, and the petition was denied. Appellant filed a timely notice of appeal.

III. DISCUSSION

Appellant's initial petitions cited the Information Practices Act of 1977, Civil Code section 1798 et seq., as the basis for her demand for records regarding any claims against her regarding child abuse. After county counsel pointed out in its opposition that this statute did not apply to local agencies such as CPS, appellant filed her amended petition to allege that CPS had such a duty under Government Code section 6250 et seq. pertaining to inspection of public records. County counsel filed no separate opposition to this amended petition but, at oral argument before the superior court, pointed out that the Government Code sections then being relied upon by appellant contained specific exceptions denying public access to records relating to child abuse and juvenile court proceedings. (Gov. Code, §§ 6276.10, 6276.28.)

In her brief to this court, appellant complains that (1) she first became aware of the statutes exempting the sort of records she was requesting at the hearing before the court, (2) at that hearing she was attempting to "to gain an understanding and/or explanation for the report to the court, by [county counsel], during the hearing," and (3) the lower court

[1] All further dates noted are in 2002.

denied her due process by its "refusal to answer appellant's questions during the hearing."

But starting with the filing of her amended petition on October 28, appellant was clearly aware of the provisions of Government Code section 6250 et seq., relating to the public's (clearly limited) right to inspect the records of local government agencies. At oral argument before the court, before the deputy county counsel had even cited the exemptions statutes, appellant urged the court (as she now urges us) to interpret Government Code section 6253.1 as requiring CPS to provide her with the records she was requesting from it.

In the first place, Government Code section 6253.1 makes no such requirement; appellant simply misreads that statute. Secondly, appellant's abrupt change in the code sections she was relying upon, i.e., from Civil Code section 1798 et seq. to Government Code section 6250 et seq., relieved county counsel of any obligation to explain to her what specific sections of the latter code meant. Third and finally, and as the lower court patiently explained to appellant at the hearing, there was nothing before it which even hinted, much less established, that CPS *even had* any records of the sort appellant was requesting. At that hearing, appellant admitted that, when she first requested these sort of records in 1994, "[t]hey [presumably CPS] conducted a record search and of course there are no records. So I was simply requesting an update to that same request and [it] became all complicated."

A writ of mandate simply does not lie to compel a public agency to produce records, particularly records subject to specific statutory exemptions, when the petitioner admittedly does not know whether any such records ever existed, much less currently exist.

IV. DISPOSITION

The order denying appellant's petition for a writ of mandate is affirmed.

_____
Haerle, Acting P.J.

We concur:

_____
Lambden, J.

_____
Ruvolo, J.